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Report of the Secretary-General on the establishment of a special tribunal for Lebanon

Addendum

Statement by Mr. Nicolas Michel, Under-Secretary-General for Legal Affairs, the Legal Counsel, at the informal consultations held by the Security Council on 20 November 2006

Mr. President,

Ladies and Gentlemen members of the Security Council,

It is both a great honour and a heavy responsibility for me to submit this introductory report to you today. The issue before you is an important and sensitive one, and the stakes are substantial, both in Lebanon and elsewhere. I will begin by recalling various aspects of the process that is under way. I will then point out the key features of the draft document before you. Lastly, I will highlight the principal challenges involved.

By Security Council resolution 1664 (2006) you requested the Secretary-General to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice, taking into account the recommendations in the report of the Secretary-General of 21 March 2006 and the views that had been expressed by Council members. The negotiations were conducted on that basis and in that spirit. The report of the Secretary-General on the establishment of the tribunal provides a glimpse of the negotiations. The following additional information will be useful. First, it must be emphasized that the Lebanese negotiators were designated by a consensus decision of the Government of Lebanon, under the leadership of the President himself. Accordingly, the Lebanese delegation was fully empowered to negotiate on behalf of the national authorities. Secondly, both the principle and the substance of the negotiations benefited from the unanimous support for the establishment of the tribunal expressed by the Lebanese national dialogue at its first meeting. Thirdly, the Lebanese constitutional process for the conclusion of an agreement with the United Nations has not been completed. Major steps remain to be taken, in particular formal approval by the Government, which is the prerequisite for the signature of the treaty and its submission for parliamentary approval and, ultimately, its ratification. Only after this process has been completed will Lebanon have entered into an internationally binding

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commitment. Although the decision by the Government on Monday, 13 November 2006, to support the draft agreement and statute is of considerable political importance, it is not a formal step in the process of concluding the treaty. Accordingly, and pending a decision by the Government, at this stage the Republic of Lebanon has not entered into an internationally binding commitment. It will have done so only once the constitutional process has been completed and the treaty has been ratified.

I will turn now to the second part of my introductory statement. Before going into some of the specifics of the agreement and the statute I would note with satisfaction that the draft documents before you meet the criterion you established in calling for a tribunal based on the highest international standards of criminal justice. As currently envisaged, the tribunal will be a purely jurisdictional entity whose independence and impartiality will be guaranteed in full.

I shall focus on six characteristics of the tribunal, although this is not an exhaustive list:

(1) Jurisdiction of the tribunal. The tribunal will be competent to try those responsible for the attack on former Prime Minister Hariri. It will have jurisdiction over the perpetrators of other attacks only under very strict conditions: the attacks must be on the list of 14 attacks annexed to the report; they must be connected to the attack on Mr. Hariri, in accordance with the principles and criteria set out in the agreement and the statute; they must be similar to that attack in nature and gravity; and, lastly, the tribunal itself, that is, the judges, ultimately will determine whether these conditions have been met.

(2) Applicable criminal law. The prosecution and punishment of the crimes under the jurisdiction of the tribunal shall be governed by Lebanese criminal law, specifically the provisions mentioned in article 2 of the draft statute. Early in the negotiations the possibility was raised of incorporating legal grounds that would enable the judges, in certain circumstances and with sufficient proof, to qualify crimes as crimes against humanity. The draft document before you does not include this possibility. The text of the statute, the language of the report, the preparatory work and the background of the negotiations clearly demonstrate that the tribunal will not be competent to qualify the attacks as crimes against humanity.

(3) Appointment of judges. In the initial phase, the procedure for appointing Lebanese judges will differ slightly from the procedure for appointing international judges. However, the international phase of the selection process will be the same for all judges. The Government and the Secretary-General will consult each other in this regard. The objectivity and impartiality of the process will be assured through the establishment of a selection panel consisting of two international judges and a representative of the Secretary-General, who will have indicated his intentions to the Security Council prior to the panel's establishment. Finally, the Secretary-General will appoint the judges upon the recommendation of the selection panel. The same procedure will be followed for the appointment of the prosecutor.

(4) Funding. The Council had requested the Secretary-General to submit funding options. This is why article 5 of the draft agreement was left blank. The options are given in the report, which indicates that the list is not exhaustive.

(5) Entry into force of the agreement and commencement of the functioning of the tribunal. The agreement draws a clear distinction between these two phases. Entry into force is contingent upon the completion of domestic constitutional procedures in Lebanon and the notification of such completion to the United Nations. The tribunal is to commence functioning on a date to be determined by the Secretary-General in consultation with the Government of Lebanon, taking into account the progress of the work of the International Independent Investigation Commission. Practical arrangements will be made to ensure that there is a coordinated transition from the activities of the Commission to the activities of the tribunal, with a view to achieving efficiency and cost-effectiveness in the tribunal's operation.

(6) Duration of the agreement. The agreement includes provisions designed to keep the duration of the process under control. It is envisaged that the agreement will remain in force for three years from the date of the commencement of the tribunal's functioning. Subsequently, the agreement provides for a review of the progress of the tribunal's work. This review will be conducted by the parties in consultation with the Security Council. If at the end of this three-year period the activities of the tribunal have not been completed, the agreement provides for an extension to be determined by the Secretary-General in consultation with the Government and the Security Council.

In the third part of my introduction, I should like to touch upon certain aspects of the issues at stake in your deliberations on the draft texts before you.

When the Council unanimously decided to request the Secretary-General to negotiate an agreement with Lebanon, it was responding to a request for assistance from the Lebanese authorities. Faced with a series of heinous attacks, in particular the highly symbolic one that took the life of former Prime Minister Hariri, those authorities, with the support of an entire people, called for justice to be done. But they were convinced that, given the circumstances, the national justice system would not be able to meet that objective. Let us recall that Lebanon has suffered greatly for too many years. It had embarked on a reconstruction effort, with remarkable courage and effectiveness. It was advancing on the path to greater well-being, the independent exercise of its sovereignty and a more stable domestic peace, when the attacks were perpetrated. Since then, Lebanon has sought to resume progress towards a prosperous and peaceful future, but the difficulties and obstacles seem to be multiplying. Today, Lebanon needs the help of the international community to lay the foundation for lasting peace in the country and to become a force for peace in the region. As a precondition for this, steps must be taken to end the impunity of the perpetrators of odious crimes such as the assassination of former Prime Minister Hariri. To that end, the truth must be revealed and justice must be done. Lebanon has called upon you to help. You have before you today a draft text that will enable you to make a decisive contribution to justice and peace in Lebanon. The Lebanese authorities have asked you to establish an international tribunal. On

behalf of the Secretary-General, I invite you today to take a decisive step in that direction by supporting the draft text on the tribunal's establishment and by fully supporting the rest of the process.

It is true that this process has not been completed. As I said at the beginning of my statement, a number of major hurdles in the domestic constitutional process remain to be cleared. Given the situation, of which we are all aware, this process must be pursued with both determination and wisdom: with determination because there are obscure forces that will stop at nothing to prevent the tribunal's establishment, and with wisdom because, in order to advance the cause of peace, the judicial process must enjoy the necessary support. In this connection, however, it is important to recall that prudence consists not of retreating in the face of difficulty, but of choosing the best ways of reaching the legitimate goal.